

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

**STUART YODER**

Johnson County, Iowa

ADMINISTRATIVE ORDER

NO. 2008-AQ- ~~23~~

NO. 2008-SW- ~~16~~

TO: Stuart Yoder  
1427 Angle Road SW  
Kalona, Iowa 52247

**I. SUMMARY**

This Order requires you to (1) immediately cease any and all open burning of prohibited solid waste at the Angle Road site or any other site in the State unless exempted under subrule 567 IAC 23.2(3); (2) immediately cease any and all open dumping of solid waste; (3) properly recycle or dispose of all waste at a permitted disposal site; and (4) pay a penalty of \$5,000.00.

Questions regarding this Order should be directed to:

**Relating to technical requirements:**

Aaron Pickens, Field Office 6  
Iowa Department of Natural Resources  
1023 W. Madison  
Washington, IA 52353  
Phone: (319) 653-2135

**Relating to legal requirements:**

Kelli Book, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Urbandale, Iowa 50322  
Phone: 515/281-8563

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**Appeal, if any, to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

This Order is issued pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted

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pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

**PAST ENFORCEMENT HISTORY**

1. Mr. Stuart Yoder owns the property located at 1427 Angle Road SW, Kalona, Johnson County, Iowa (Angle Road site). Mr. Yoder also owns and operates Advanced Roof Coatings from this location.

2. On February 10, 2005, DNR Field Office 6 (FO 6) received a complaint alleging that Mr. Yoder was hauling demolition debris from Reif Discount Store to the Angle Road site and burning the debris.

3. On February 15, 2005, DNR FO 6 received a second complaint about demolition debris being hauled from Reif Discount Store to the Angle Road site and being burned by Mr. Yoder.

4. On March 29, 2005, Mr. Yoder was issued a Notice of Violation (NOV) letter for asbestos, open burning, and improper solid waste disposal violations.

5. On August 25, 2005, Mr. Yoder was issued Administrative Order No. 2005-AQ-16 and No. 2005-SW-16. Mr. Yoder was ordered to: (1) immediately cease all open burning and refrain from any further burning at the Angle Road site or any other site in the future unless exempted under subrule 567 IAC 23.2(3); (2) dispose of all demolition debris at a permitted sanitary disposal site; (3) submit the proper demolition notification and asbestos results to the DNR prior to demolition of any building or trailer; (4) obtain appropriate permits before transferring waste from one site to another for recycling purposes; and (5) pay a penalty of \$5,000.00. The penalty was later reduced to \$3,500.00. Mr. Yoder submitted disposal receipts to DNR FO 6 and paid a penalty of \$3,500.00.

**CURRENT ENFORCEMENT HISTORY**

6. On May 5, 2008, DNR FO 6 received a complaint alleging that Mr. Yoder had been burning tires at night at the Angle Road site. The complainant alleged that additional tires had been added to the burn pile.

7. On May 7, 2008, DNR FO 6 received another complaint regarding the burning of tires at the Angle Road site. Subsequently, Aaron Pickens and Terry Jones, environmental specialists for DNR FO 6, conducted an investigation at Mr. Yoder's property. Upon arrival, Mr. Pickens and Mr. Jones observed a pile located west of the residence emitting flames and smoke. Evidence of metal wire and banding in the pile indicated that tires were being used in the open burning. It was estimated that forty to sixty tires had been burned. Three burn barrels were also observed northwest of the residence containing miscellaneous solid waste. A

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card was left at the residence with instructions to contact Mr. Pickens regarding the complaint. However, no call was received. Photographs were taken to document the findings of the investigation.

8. On May 9, 2008, Mr. Pickens contacted Mr. Yoder regarding the complaint and investigation. Mr. Yoder claimed that the tire fire was started by kids as a prank and that he has contacted the fire department regarding the fire. Mr. Yoder admitted to burning wood and trash at the site prior to the tire burn. Mr. Yoder was informed of the rules and made aware that burning was also in violation of his previous administrative order. Steve Yotty, Kalona fire chief, was contacted to verify Mr. Yoder's claim that he had contacted the fire department regarding the tire fire. Mr. Yotty indicated that he had heard about the fire through a third party but no call had been received and the fire department was never dispatched.

9. On May 14, 2008, an NOV letter was sent to Mr. Yoder for open burning of combustible materials and improper solid waste disposal. The letter also informed Mr. Yoder that the matter was being referred for further enforcement action.

**IV. CONCLUSIONS OF LAW**

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-34 relating to air quality.

2. 567 IAC 23.2 states that no person shall allow, cause, or permit open burning of combustible materials except as provided in subrules 567 IAC 23.2(2) (variances) and 567 IAC 23.2(3) (exemptions). On May 7, 2008, DNR FO6 staff found evidence of metal wire and banding in a burn pile that indicated tires were being burned. It was estimated that forty to sixty tires had been burned. Three burn barrels were also found containing miscellaneous solid waste. The burning does not fall under 567 IAC 23.2(2) exemptions. The above facts demonstrate a violation of this provision.

3. Iowa Code section 455B.307 and 567 IAC 100.4 prohibit a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. Mr. Yoder disposed of waste by burning rather than recycling or disposing the waste at a sanitary landfill. The above facts demonstrate a violation of this provision.

**V. ORDER**

THEREFORE, it is hereby ordered that Mr. Yoder do the following:

1. Immediately cease any and all open burning of prohibited solid waste at the Angle Road site or any other site in the State unless exempted under subrule 567 IAC 23.2(3);

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2. Immediately cease any and all open dumping of solid waste;
3. Properly recycle or dispose of all waste at a permitted disposal site; and
4. Pay a penalty of \$5,000.00 within 60 days of the date from which the Director signs this administrative consent order.

**VI. PENALTY**

1. Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC chapter 10, which authorize the Director to assess administrative penalties, a penalty of \$5,000.00 is assessed effective 30 days from receipt of this Order by Mr. Yoder, unless this Order is appealed within that time, as provided in Part VII of this Order. The penalty shall be paid within 60 days of receipt of this Order, unless a timely appeal is filed.

2. Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision. Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste violations involved in this matter.

3. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Order with an administrative penalty of \$5,000.00. The administrative penalty assessed by this Order is determined as follows:

Economic Benefit – Mr. Yoder saved a minimum of \$200.00 by improperly disposing of tires and other solid waste. It was estimated that forty to sixty tires were burned. The landfill disposal fee is \$3.00 per tire. Taking the minimum estimate of forty burned tires, Mr. Yoder saved \$120.00 for the landfill disposal fees. The transportation and handling costs to and from the landfill would have been \$80.00. Therefore, a total of \$200.00 is assessed for this factor.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. The improper disposal and burning of trade waste, including tires, plastics, and manufactured wood products releases harmful toxins into the air such as carbon monoxide, dioxin/furans, hydrochloric acid, volatile organic compounds, heavy metal and fine particulate. Improper solid waste disposal also impacts the environment, the character of neighborhoods, and the quality of life of local residents. Tax dollars were expended to investigate, document, and respond to this violation. In addition, Mr. Yoder has been issued a previous administrative order. The open burning and improper solid waste disposal cited in this

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administrative order also violate the previous administrative order. Therefore, \$1,800.00 is assessed for this factor.


Culpability – Mr. Yoder was aware of Iowa's open burning and solid waste rules from previous incidents involving open burning and improper dumping; including an administrative order issued in 2005. Mr. Yoder also operates Advanced Roof Coatings from this address and has a responsibility to remain knowledgeable of DNR's rules and regulations and to recognize that noncompliance could result in enforcement action. Therefore, a penalty of \$3,000.00 is assessed for this factor.

**VII. APPEAL RIGHTS**

Pursuant to Iowa Code sections 455B.138 and 455B.308 and 567 IAC 7.5(1), a written Notice of Appeal to the Commission may be filed within 30 days of receipt of this Order. The Notice of Appeal should be filed with the Director of the DNR and must identify the specific portion or portions of this Order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC chapter 7.

**VIII. NONCOMPLIANCE**

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307.

  
RICHARD A. LEOPOLD, DIRECTOR  
Iowa Department of Natural Resources

Dated this 28 day of  
August, 2008.

Barb Stock (Con 10-6 Johnson County); Kelli Book; DNR Field Office 6; VI.C; VII.C.1